IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16832 of 2003

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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N I SATHWARA - Petitioner(s)
Versus
UNION OF INDIA & 1 - Respondent(s)

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Appearance :
MR P.R. Parmar for PH PATHAK for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
MS PAURAMI B SHETH for Respondent(s) : 2,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 21/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

1. The petitioner has challenged in this petition the impugned order dated 31st July, 2002 passed in O.A. no.751/1997 by the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad (for short “the Tribunal”) and subsequent order dated 6th January, 1993 passed in Review Application no.100/2002.

2. Learned Counsel Shri Parmar for the petitioner submitted that DPC never met from 1992 to 1994 and though there was penalty of only censure, the case of the petitioner was not considered for promotion to the higher post. This argument of Mr. Parmar has to be straight away rejected because the initial penalty of withholding of increment for 12 months was passed but later on it was reduced to censure. From the impugned judgment and order of the learned Tribunal it is clear that the case of the petitioner was considered on 17-3-1998 as on 1-10-1991 and after scrutinizing his CR file and other relevant records, the DPC did not find him fit for promotion. In the same manner, the DPC met on 10-3-1995, 2-8-1995 and 20-2-1996 and on all the three occasions considered the case of the petitioner but did not find him fit for promotion. Thereafter, on 26-7-1996, 11-3-1997,

11-8-1997 and 23-2-1998 once again the DPC considered the case of those persons who have completed 26 years which includes the case of the petitioner but again he was not found fit for promotion.

3. Under the circumstances, in our considered opinion, the learned Tribunal was right in holding that a person has only right to be considered for promotion and cannot seek promotion as a matter of right. The Court has to consider only this aspect as to whether the DPC has considered the case of the petitioner in accordance with the law or not. There was no grievance made against the constitution of the DPC by the petitioner-applicant and that his case was not considered as on 1-10-1991. Merely because penalty of 12 months was reduced to the penalty of “censure” that does not mean that the petitioner should have been considered for promotion. The other aspects of the case also is required to be considered by DPC and when after full consideration if the DPC has found him not fit for promotion, then the decision of the DPC cannot be interfered by any Court.

The Court or Tribunal cannot sit in appeal over the decision of the DPC. In absence of mala fide, the decision taken by the DPC cannot be

interfered.

In view of the above discussion, we are not inclined to interfere with the impugned order of the Tribunal in our limited jurisdiction under Article 227 of the Constitution when no error either on fact or law much less jurisdictional error is committed by the Tribunal while dismissing the application of the petitioner.

In the result, the petition fails and is hereby dismissed. Rule discharged. No costs.

(B.J.Shethna,J.)

(M.D.Shah,J.)

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